

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

JERRY REID,

Plaintiff,

vs.

**SAFECO INSURANCE COMPANY
OF INDIANA,**

Defendant.

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CASE NO. 1:15-cv-00070-P

**DEFENDANT SAFECO INSURANCE COMPANY OF INDIANA'S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

Defendant Safeco Insurance Company of Indiana ("Safeco" or "Defendant") this this, its Motion for Summary Judgment, asking the Court to dismiss each of Plaintiff's claims against it. Adequate time for discovery has passed, and the undisputed facts show that Plaintiff cannot support, and further that Plaintiff is unable to produce, evidence of at least one essential of its claims at trial, which necessarily all other facts immaterial. Filed concurrently herewith is Defendant's Brief in Support of its Motion for Summary Judgment.

I.

SUMMARY

This dispute arises out of a claim under a policy of insurance issued by Safeco. As required by Local Rule 56.3(a), the following is a summary of the elements of each claim for which summary judgment is sought:

- **Breach of Contract**: Safeco is entitled to summary judgment on Plaintiff's breach of contract claim under the doctrine of concurrent causation. Plaintiff has not presented, and

cannot present, any evidence upon which the jury can allocate the damage attributable to a covered peril, which is fatal to Plaintiff's recovery as a matter of law.

- **Breach of Contract**: Safeco is further entitled to summary judgment on Plaintiff's breach of contract claim due to the fortuity, or "known loss" doctrine, as Plaintiff had actual knowledge of the claimed damage prior to his purchase of his policy with Safeco.
- **Extra-Contractual Claims under the Texas Insurance Code and Deceptive Trade Practices Act, and Breach of the Common Law Duty of Good Faith and Fair Dealing**: As a matter of law, each of Plaintiff's extra-contractual claims fail absent proof of breach of contract. Further, the undisputed facts show that Plaintiff cannot adduce any evidence to support them.

Each of the matters required in Local Rule Rule 56.3(a) will be set forth in Defendant's Brief in Support, filed concurrently herewith, as permitted by Local Rule 56.3(b).

II.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Safeco respectfully requests summary judgment on each of Plaintiff's claims asserted against Safeco. Safeco further requests that upon such ruling, the Court dismiss Safeco from this action, with prejudice, and order that Plaintiff Jerry Reid take nothing of and from Safeco, and award Safeco all other and further relief, both general and special, legal or equitable, to which Safeco may be justly entitled.

Respectfully submitted,

/s/ Mark D. Tillman

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served upon all counsel of record on April 29, 2016, via the Court's ECF and/or email in accordance with the Federal Rules of Civil Procedure:

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